

ROBERT T. P. METCALF TRUST

IBLA 83-66

Decided July 22, 1983

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application C-35290.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

A simultaneous oil and gas lease application which was filed in the name of a trust, but was not accompanied by the statements required by 43 CFR 3102.2-3 (1981) and which did not refer to a file reference number was properly rejected.

2. Oil and Gas Leases: Applications: Attorney-in-Fact or Agents

Under 43 CFR 3102.2-6(b) (1981), a copy of a uniform agreement was required to be filed with the simultaneous oil and gas lease application.

APPEARANCES: David K. Detton, Esq., and McKay Marsden, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Robert T. P. Metcalf Trust (Trust) appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 9, 1982, which rejected simultaneous oil and gas lease application C-35290 filed during the January 1982 filing period.

The application was filed by Sheldon Associates, Inc. (Sheldon), as agent for the Trust. No other material was filed with the application. The application was drawn with first priority for parcel CO-198.

The BLM decision of September 9, 1982, rejected the application stating:

[N]o evidence of the qualifications of the trust (or its trustee) to hold interests in Federal oil and gas leases was submitted with the application or by reference on the application. A thorough search of this office's records has failed to reveal that any evidence of the qualifications of the "trust" was filed until the relatively terse statement contained on the list of clients of Sheldon Associates was filed on February 5, 1982. This statement indicates that the "trust is for sole party interest of Robert T. P. Metcalf. Metcalf is the sole beneficiary."

In the statement of reasons for appeal, counsel for appellant state that the Trust is a trust qualified to hold Federal oil and gas leases, and that BLM was informed by Sheldon, agent for the Trust, that Metcalf is the sole beneficiary of the Trust as noted on a list sent to BLM on February 4, 1982, which was 15 days after the application was filed. As noted in the decision, the list stated that the "trust is for the sole party interest of Robert T. P. Metcalf. Metcalf is the sole beneficiary."

Counsel contend that there was sufficient evidence to clearly indicate that Metcalf is the sole beneficiary of the Trust and that both Metcalf and the Trust are qualified to hold interests in Federal oil and gas leases. Counsel argue that the Trust is "clearly in substantial compliance with 43 CFR § 3102.2 et seq. (1981)." Counsel note that 43 CFR Subpart 3102 was revised on February 26, 1982, by deletion of the requirement that a trust must file statements of qualifications with lease applications. ^{1/} They argue that since the Trust was in compliance with the revised regulations which became effective while the application was pending, the application should not have been rejected.

[1] The regulations relating to trusts in effect at the time the filing was made in this case provided:

If the offeror or applicant is a guardian or trustee filing on behalf of a ward or beneficiary, the offer, or application if leasing is pursuant to Subpart 3112 of this title, shall be accompanied by a certified copy of the court order, or other document, establishing the relationship and authorizing the guardian or trustee to fulfill all obligations of the lease or arising thereunder. A statement as to the age, citizenship and as to compliance with the acreage limitations set forth in §§ 3101.1-5 and 3101.2-4 of this title by the guardian or trustee and by each ward or beneficiary shall be signed by the guardian or trustee and shall accompany each offer or application if leasing is pursuant

^{1/} Counsel cite language from what they refer to as BLM Circular No. 2497, dated February 26, 1982, which they assert states: "Pending applications and offers for which there are no junior conflicting applications or offers pending on this date will not be subject to rejection for any failure to comply with the rules in Subpart 3102 of Title 43 of Code of [Federal] Regulations in effect at the time of filing." We note that this is the same language which appeared in the preamble to the interim final rules. 47 FR 8544 (Feb. 26, 1982).

to Subpart 3112 of this title. The trustee of a revocable trust shall also submit a statement identifying the grantor of the trust and persons with the power of revocation.

43 CFR 3102.2-3 (1981).

The thrust behind this regulation was that the Department believed the information concerning the qualifications of the trustee and the beneficiary were necessary, among other reasons to insure against multiple filings. See 43 CFR 3112.6-1(c)(4) (1981). The qualifications of the trustee are important because the trustee is "the person who takes and holds the legal title to the trust property for the benefit of another." 89 C.J.S. Trusts § 3 (1955). A trust is a legal entity. Action is taken on behalf of a trust by the trustee.

In this case the Trust filed an application using the services of Sheldon, as agent. However, who authorized Sheldon to act as agent for the Trust? Nowhere is the identity of the trustee of the Trust disclosed. In order for a trust properly to have filed a simultaneous oil and gas lease application under the 1981 regulations, the trustee would have had to file the application on behalf of the trust, as trustee, or the trustee would have had to act through an agent in so filing. Herein, one could argue that there was no violation of 43 CFR 3102.2-3 (1981) because that regulation refers only to the situation where the applicant is a trustee, and in this case the applicant was the trust, not the trustee. However, such an argument ignores the fact that a trust operates through the trustee. Thus, we must conclude that, in fact, the applicant in this case had to have been the trustee. Under 43 CFR 3102.2-3 (1981), the application in this case should have been accompanied by the trust agreement and a statement of qualification for both the trustee and the beneficiary. Failure to include those documents properly subjected the application to rejection. The filing made by Sheldon subsequent to submission of the application did not satisfy the requirements of 43 CFR 3102.2-3 (1981). 2/

[2] There are other grounds for rejecting the application in this case. The application was filed by an agent. On the back of the application under applicant's signature was typed the following: "ROBERT T P METCALF PRINCIPAL." In the space for agent's signature appeared the following in type "BY SHELDON ASSOCIATES, AGENT BY," followed by the holographic signature of "John Deans" in ink. Under 43 CFR 3102.2-6(b) (1981), governing requirements for agents, a copy of the uniform agreement was required to be submitted with the lease application. Arthur H. Kuether, 65 IBLA 184, 188 (1982). A copy of the uniform agreement did not accompany the application in this case but was filed later along with the list of names and addresses. The 15-day period mentioned in 43 CFR 3102.2-6(b) (1981) applied to the filing of the list of names and addresses of each applicant participating under the

2/ There is no issue in this case involving filing by reference under 43 CFR 3102.2-1(c) (1981), since no file reference number was placed on the application.

agreement, id., or to the filing of information clarifying errors or omissions in those required filings. Robert E. Davis, 65 IBLA 135 (1982). 3/

In addition, when Sheldon submitted the names and addresses of clients, it listed the Trust as the client with the address of the Trust. Clearly, the client of Sheldon would have had to have been the trustee acting on behalf of the Trust. Thus, when Sheldon submitted only the name of the Trust, it was not providing the proper information required by 43 CFR 3102.2-6(b) (1981).

As noted in the statement of reasons, on February 26, 1982, the Department published interim final rulemaking which revised 43 CFR Subpart 3102. Those revisions effectively eliminated the requirement to file trust and trustee qualifications found in 43 CFR 3102.2-3 (1981) and the agent statements required by 43 CFR 3102.2-6 (1981). It is argued that the Trust should have the benefit of the regulatory change.

We have long held that where there are intervening rights, a first-drawn applicant may not have the benefit of an amended regulation. See, e.g., Arthur H. Kuether, supra. Therefore, where applications had been accorded priority as a result of a simultaneous drawing, the amended regulation could not be applied. In order to be considered "junior conflicting applications," the next-drawn applications in the January 1982 simultaneous drawing for parcel CO-198 only had to be accorded a lower priority than appellant's application. The language quoted in footnote 1, supra, would, therefore, be limited to those instances where no other simultaneous applications were filed for a particular parcel. Although the qualifications of the next-drawn applicants are not determined until after BLM has adjudicated the rights of the first-priority applicant, it is the right of the second-priority applicant to proceed to have his or her application adjudicated which prevents the revised regulations from being applied in this case. See Neil Hirsch, 70 IBLA 307, 311-12 (1983), appeal filed, Hirsch v. Watt, NC-83-0097A (D. Utah May 5, 1983). BLM properly rejected appellant's application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

3/ Under 43 CFR 3102.2-6(b) (1981), the 15-day period began to run from the close of the filing period for each drawing. Robert E. Davis, supra. Accordingly, the list of names and addresses was timely filed by Sheldon.

